Supreme Court U.S.
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No. 92-1920

In the Supreme Court of the United States

OCTOBER TERM, 1993

KAREN LIVADAS, PETITIONER

v.

LLOYD AUBRY,
CALIFORNIA LABOR COMMISSIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether petitioner may sue the California Labor Commissioner for injunctive relief and damages under 42 U.S.C. 1983, for refusing to prosecute her state wage-and-hour claim on the basis of her status as an employee covered by a collective bargaining agreement containing an arbitration clause.

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INTEREST OF THE UNITED STATES

The court of appeals in this case (Pet. App. 7a) acknowledged that the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, gives petitioner "a right to engage in collective bargaining, and [42 U.S.C.] 1983 therefore provides a remedy for a deprivation of that right." The court held, however, that respondent did not impermissibly interfere with petitioner's exercise of her rights under the NLRA by refusing to prosecute her wage claim under the California Labor Code on the basis of her status as an employee covered by a collective bargaining agreement containing an arbitration clause. Respondent's action was based on the legal conclusion that petition-

er's claim was preempted under Section 301 of the Labor-Management Relations Act (LMRA), 29 U.S.C. 185.

The court of appeals' decision misapplies the doctrine of federal labor law preemption under Section 301 of the LMRA, as articulated in decisions of this Court. It is also inconsistent with decisions of the Court holding that state action that impairs rights protected by the NLRA is preempted by direct operation of the Supremacy Clause. The United States, and the National Labor Relations Board in particular, have an important interest in ensuring that States do not discriminate against employees who exercise their rights under the NLRA, and that States enforce their laws in a manner consistent wtih NLRA and Section 301 preemption principles. At the Court's invitation, the United States filed a brief amicus curiae at the petition stage of this case.

STATEMENT

1. On January 2, 1990, petitioner, a union-represented employee covered by a collective bargaining agreement, was discharged from her position as a clerk at a Safeway store in Napa County, California.[1] On that date, she requested payment of all wages due her. The store manager refused, telling petitioner that he would mail her a check instead. Petitioner received that check three days later, on January 5. Pet. App. 2a.

Petitioner believed that Safeway's three-day delay in payment violated California law. Section 201 of the California Labor Code provides: "If an employer

[1] Petitioner was represented by Local 373, United Food and Commercial Workers, AFL-CIO. Pet. App. 24a.

discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal. Lab. Code § 201 (West 1989). Section 203 provides: "If an employer willfully fails to pay * * * in accordance with Section[] 201 * * * any wages of an employee who is discharged or who quits, the wages of such employees shall continue as a penalty from the due date thereof at the same rate until paid." Cal. Lab. Code § 203 (West 1989). On January 9, petitioner filed a claim with the California Division of Labor Standards Enforcement (DLSE) seeking a penalty payment from Safeway pursuant to Section 203. Pet. App. 2a-3a.

Respondent is the California Labor Commissioner and head of DLSE. He is authorized by Section 98.3(a) of the California Labor Code to prosecute actions to collect penalties on behalf of individuals who are "financially unable to employ counsel and * * * have claims which are valid and enforceable" under the California Labor Code. Cal. Lab. Code § 98.3(a) (West 1989). Pet. App. 3a. On February 7, 1990, DLSE sent petitioner a letter declining to prosecute her claim. *Ibid.* The letter stated (*id.* at 8a):

> It is our understanding that the employees working for Safeway are covered by a collective bargaining agreement which contains an arbitration clause. The provisions of Labor Code Section 229 preclude this Division from adjudicating any dispute concerning the interpretation or application of any collective bargaining agreement containing an arbitration clause. [2]

[2] Cal. Lab. Code § 229 (West 1989) states (Pet. 3):

> Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of

> Labor Code Section 203 requires that the wages continue at the "same rate" until paid. In order to establish what the "same rate" was, it is necessary to look to the collective bargaining agreement and "apply" that agreement. The courts have pointed out that such an application is exactly what the provisions of Labor Code Section 229 prohibit.

2. a. On February 16, 1990, petitioner filed an action in federal district court against respondent in his official capacity as Labor Commissioner under 42 U.S.C. 1983, seeking injunctive and declaratory relief and damages based on respondent's refusal to prosecute petitioner's claim against Safeway for the penalty prescribed by Section 203 of the California Labor Code. Pet. App. 3a. As described by the district court (*id.* at 24a-25a), the complaint alleged that DLSE maintains "[an] agency policy of discrimination in the enforcement of the California Wage and Hour Law against employees who work under collective bargaining agreements which have arbitration clauses." That policy, petitioner alleged, "denied her access to the investigatory, prosecutorial, and remedial resources provided under [the] California Labor Code * * * for the sole reason that she is an employee" covered by such an agreement. *Id.* at 25a. DLSE's policy entitles her to relief under Section 1983, petitioner urged, since it denies her benefits merely because she has engaged in federally protected rights to "participat[e] in a labor union and in collective bargaining." *Ibid.*

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any private agreement to arbitrate. This section shall not apply to claims involving any dispute concerning the interpretation or application of any collective bargaining agreement containing such an arbitration agreement.

Respondent admitted in the district court that DLSE's policy "is to enforce Labor Code [Sections] 201 and 203 for all employees except for those whose work is governed by [collective bargaining agreements] containing binding arbitration clauses." Pet. App. 25a. He defended DLSE's policy on the ground that it is required by federal labor law preemption doctrine. Respondent explained that "[s]ince damages under [Section] 203 are determined in terms of wages, which are established by the [collective bargaining agreement], * * * enforcement of the statute would entail interpretation of the [agreement]." *Id.* at 26a.

b. The district court granted summary judgment for petitioner. Pet. App. 49a. Relying on this Court's decision in *Golden State Transit Corp.* v. *City of Los Angeles*, 475 U.S. 608 (1986) (*Golden State I*), the district court stated that a state or local governmental policy that burdens or penalizes employees' exercise of rights granted by the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, is preempted by the NLRA. Moreover, under *Golden State Transit Corp.* v. *City of Los Angeles*, 493 U.S. 103 (1989) (*Golden State II*), an employee so affected by such a policy may obtain injunctive relief and damages from the governmental unit under Section 1983. Pet. App. 27a-32a. The district court concluded that the NLRA affords petitioner the right to negotiate, through her union, a collective bargaining agreement containing an arbitration clause, and that DLSE's policy of granting benefits provided by state law to all employees except those who work under such a labor contract infringes upon that federal right. *Id.* at 32a-38a.

Finally, the district court rejected respondent's defense (reflected in DLSE's February 7 letter to petitioner) that DLSE was "preempted" from prosecuting petitioner's claim by Section 229 of the California Labor Code, as interpreted by the California courts.[3] The district court held that preemption doctrine is a matter of federal, not state, law and that, insofar as Section 229 is interpreted as going beyond the requirements of federal preemption doctrine, it is invalid. Pet. App. 39a-44a, 48a. Relying on *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985), and *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), the district court concluded that petitioner's state-law claim for a penalty payment from Safeway was not preempted by Section 301 of the Labor-Management Relations Act (LMRA), 29 U.S.C. 185. The question whether Safeway violated state law, the district court found, "can be determined wholly independently from the [collective bargaining agreement]. * * * It requires reference only to a calendar, not to the [agreement], to determine that the statute was violated and penalties are due." Pet. App. 41a.

Accordingly, the district court, *inter alia*, issued an injunction requiring respondent to enforce Sections 201 and 203 "without discrimination based upon a given claimant's coverage under a collective-

[3] In *Plumbing, Heating & Piping Employers Council* v. *Howard*, 126 Cal. Rptr. 406 (Cal. Ct. App. 1975), discussed in note 6, *infra*, the state appellate court addressed the question whether Section 229 "precludes the Labor Commissioner from hearing and enforcing a claim for collection of alleged due and unpaid wages by an employee who belongs to a union which has entered into a collective bargaining agreement which contains an arbitration clause." 126 Cal. Rptr. at 409.

bargaining agreement having an arbitration clause." Pet. App. 49a. It ordered respondent to institute an action on petitioner's behalf in the California courts under Section 203, and to pay her the full value of her wage claim in the event that the state courts found her claim time-barred. *Ibid.*

3. A divided panel of the Ninth Circuit reversed. The panel majority agreed with the district court that petitioner has a right under the NLRA to engage in collective bargaining and that she has a cause of action under Section 1983 to obtain a remedy if the State interferes with that right. Pet. App. 7a. The majority held, however, that DLSE's policy does not "implicate[] [petitioner's] federal rights at all." *Id.* at 10a. The court understood Section 229, as interpreted by the state courts, "to preclude the adjudication of claims that would be preempted by federal labor law." *Id.* at 9a. For respondent to so limit his enforcement of Section 203 claims, the court concluded, "is perfectly permissible under federal law." *Id.* at 11a. The court further stated that, even if respondent were mistaken in deciding that petitioner's claim is preempted by federal law (an issue which the majority did not reach), he did not thereby deprive her of rights under the NLRA. That is because respondent's refusal to prosecute petitioner's claim amounted, at most, to a misapplication of Section 229, and "[a] misinterpretation of a perfectly valid state statute * * * does not provide grounds for federal relief." *Id.* at 12a. Rather, the appropriate avenue of relief in these circumstances, the court stated, is for petitioner to seek a writ of mandate against respondent in the California courts. *Ibid.*

The court of appeals concluded that "[t]o hold that [petitioner] is entitled to federal relief in this case would require us to hold that she is entitled under the NLRA to a correct interpretation of California law regarding enforcement of [Section] 203 claims." Pet. App. 12a. The court stated that Congress did not intend the NLRA to confer any such entitlement upon unionized employees. The court reasoned that such an entitlement would "place employees who bargain collectively in a better position than those who do not because it gives them an extra avenue of redress for the erroneous determination of state law." *Id.* at 13a. Congress could not have intended that result, said the court, "[b]ecause [Section] 7 of the NLRA gives employees the right to *refrain* from bargaining collectively as well as the right to do so." *Ibid.*

In addition, the panel majority was "persuaded by the more general policies of federal labor law" that "Congress would not want state officials erring on the side of adjudicating state law disputes whenever it is a close call as to whether a claim is preempted." Pet. App. 13a-14a. "If anything," the court reasoned, "Congress would presumably want state officials to defer to arbitration * * * if a claim even arguably is intertwined with consideration of a collective bargaining agreement containing an arbitration clause." *Id.* at 14a.

Judge Kozinski dissented. He noted that respondent's refusal to process petitioner's claim because she was covered by a collective bargaining agreement "is clearly discrimination based on an exercise of protected federal rights." Pet. App. 17a. In his view, it does not matter that respondent's policy was based on his interpretation of state law: "[t]he point is,

[respondent] is applying state law and his own policy in a way that impinges on protected federal rights." *Ibid.* Therefore, and contrary to the panel majority's view, it was necessary for the court to determine whether Section 301 of the LMRA, 29 U.S.C. 185, actually preempts resolution of petitioner's claim by the state agency, not whether the state policy was reasonably intended to avoid the preemptive force of Section 301. *Id.* at 17a-18a.

Judge Kozinski then concluded, in agreement with the district judge, that, under *Lingle*, petitioner's claim is not preempted by Section 301. "A court could find that [Safeway] did not pay [petitioner] immediately upon termination—and thus violated the statute—without ever looking at the [collective bargaining agreement]." Pet. App. 19a. The dissent also found that respondent's refusal to enforce wage-and-hour claims under these circumstances impermissibly burdens the NLRA rights of employees in petitioner's position in two ways. First, it denies only employees "who exercise their federal labor rights" the benefits of respondent's pursuit of their state labor law claims free of charge. *Id.* at 20a. Second, it impedes unionization efforts by giving employers a plausible basis for telling employees during election campaigns that if they "vote for the union," then "the state Labor Commissioner [will] abandon[] you." *Id.* at 21a & n.2.

SUMMARY OF ARGUMENT

1. Section 7 of the National Labor Relations Act (NLRA), 29 U.S.C. 157, guarantees employees the right to bargain collectively, and Section 8(a)(1), 29 U.S.C. 158(a)(1), protects employees from coercion in the exercise of that right. This Court has held that state action that impairs rights guaranteed by the NLRA—including the right to bargain collectively—is barred by direct operation of the Supremacy Clause. See *Golden State Transit Corp.* v. *City of Los Angeles*, 493 U.S. 103, 109 (1989) (*Golden State II*); *Nash* v. *Florida Industrial Comm'n*, 389 U.S. 235 (1967); see also *Brown* v. *Hotel Employees*, 468 U.S. 491, 503 (1984); *Hill* v. *Florida*, 325 U.S. 538 (1945). In *Golden State II*, *supra*, this Court further held that 42 U.S.C. 1983 provides employees with a remedy for the State's deprivation of federal rights guaranteed under the NLRA.

In accordance with these principles, petitioner in this case has a valid claim for relief under Section 1983, arising from respondent's refusal to enforce her state wage-and-hour claim. In applying Section 229 of the California Labor Code, respondent has adopted a general policy of not enforcing certain wage-and-hour claims of employees covered by collective bargaining agreements containing an arbitration clause, while at the same time enforcing similar claims of employees who are not covered by such agreements. See Pet. App. 25a. Because the policy goes beyond the requirements of federal labor law preemption, and effectively interferes with employees' rights to bargain collectively, it gives rise to a cause of action under Section 1983 for the impairment of rights guaranteed by the NLRA.

2. Section 229 of the California Labor Code states that respondent may not enforce claims involving "any dispute concerning the interpretation or application" of any collective bargaining agreement containing an arbitration clause. See Pet. 3. Contrary to respondent's submission, see Pet. App. 8a, enforcing state wage claims such as petitioner's would not require respondent to interpret Section 229 of the California Labor Code in a manner that is inconsistent with principles of preemption under Section 301 of the Labor-Management Relations Act (LMRA), 29 U.S.C. 185. Petitioner's claim is not preempted by Section 301 because the disposition of her claim turns on whether petitioner received her final wage payment on time—an issue that can be resolved without referring to any term of the collective bargaining agreement covering petitioner. See *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 220 (1985); *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 409-410 (1986). Moreover, as this Court made clear in *Lingle*, 486 U.S. at 413 n.12, the fact that it might be necessary to refer to the collective bargaining agreement to determine the amount of wages due petitioner as a remedy for her employer's violation of the state wage-and-hour laws would not require preemption of her state-law claim.

3. In refusing to enforce late-payment claims such as petitioner's, where that policy is not required by federal law, respondent in effect treats a category of employees covered by collective bargaining agreements with arbitration clauses less favorably than other employees. That practice impermissibly burdens the exercise of Section 7 rights by systematically depriving employees who exercise those rights

of the benefit, which other employees enjoy, of having respondent press their state-law wage claims free of charge. The fact that the discriminatory policy might be characterized as arising from a good faith "error" in applying a state statute that purports to coincide with the scope of federal preemption does not affect the analysis. Whatever the motive for the policy, its effect is to impair employees' federal rights by selectively treating some categories of workers covered by collective agreements less favorably than employees not so covered. Moreover, the fact that respondent's refusal to enforce petitioner's claim might stem from an incorrect application or interpretation of a state statute does not foreclose relief under 42 U.S.C. 1983. See *Nash* v. *Florida Industrial Comm'n*, *supra*; *Golden State II*, *supra*. Regardless of whether petitioner might be able to obtain enforcement of her state-law claim by seeking a writ of mandate in California state court, she is entitled to sue directly for relief in federal court for the impairment of her Section 7 rights. As this Court held in *McNeese* v. *Board of Educ.*, 373 U.S. 668, 671 (1963), the availability of a remedy under Section 1983 for a violation of federal rights "may not be defeated because relief was not first sought under state law which provided a remedy."

ARGUMENT

PETITIONER IS ENTITLED TO RELIEF UNDER 42 U.S.C. 1983 FOR RESPONDENT'S INTERFERENCE WITH HER RIGHT TO BARGAIN COLLECTIVELY UNDER SECTION 7 OF THE NLRA BY REFUSING TO ENFORCE HER STATE WAGE CLAIM

Section 7 of the National Labor Relations Act (NLRA), 29 U.S.C. 157, guarantees employees the right to bargain collectively, and Section 8(a)(1), 29 U.S.C. 158(a)(1), makes it an unfair labor practice for an employer to coerce employees in the exercise of that right. This Court has recognized, however, that the NLRA confers rights "generally on employees and not merely as against the employer." *Golden State Transit Corp.* v. *City of Los Angeles*, 493 U.S. 103, 109 (1989) (*Golden State II*) (NLRA "creates rights in labor and management both against one another and against the State."). Therefore, state action that impairs rights guaranteed under the NLRA—including the right to bargain collectively—is barred by direct operation of the Supremacy Clause. See *Nash* v. *Florida Industrial Comm'n*, 389 U.S. 235 (1967); see also *Brown* v. *Hotel Employees*, 468 U.S. 491, 503 (1984); *Hill* v. *Florida*, 325 U.S. 538 (1945). For example, in *Nash*, the Florida Industrial Commission interpreted a state law that barred individuals unemployed due to a labor dispute from receiving unemployment benefits as applying to any individual who filed an unfair labor practice charge with the National Labor Relations Board. The Court found that the manner in which the State applied the "labor dispute" disqualification imposed a "financial burden" that, "like the coercive actions which employers and unions are forbidden to

engage in," had a "direct tendency to frustrate the purpose of Congress to leave people free to make charges of unfair labor practices to the Board." 389 U.S. at 239. It therefore concluded that the Florida law, as applied, violated the Supremacy Clause because the State could not "defeat or handicap a valid national objective by threatening to withdraw state benefits from persons simply because they cooperate with the Government's constitutional plan." *Ibid.*

The Court further held, in *Golden State II*, that 42 U.S.C. 1983 provides employees with a remedy for the State's deprivation of federal rights guaranteed under the NLRA. If a state statute or policy interferes with conduct that is protected by the NLRA, then "pre-emption follows . . . as a matter of substantive right," 493 U.S. at 110 (quoting *Brown* v. *Hotel Employees*, 468 U.S. at 503), and any affected employee may obtain relief under Section 1983 for interference with his federal statutory rights. *Golden State II*, 493 U.S. at 109 (NLRA gives employees "rights enforceable against governmental interference in an action under [Section] 1983").

It follows, in our view, that petitioner has a valid claim for relief under Section 1983, arising from respondent's refusal to enforce her wage-and-hour claim. In applying Section 229 of the California Labor Code, respondent has adopted a general policy of not enforcing certain wage-and-hour claims of employees covered by collective bargaining agreements containing an arbitration clause, while at the same time enforcing similar claims of employees that are not covered by such agreements. See Pet. App. 25a. As explained more fully below, that categorical policy is not required by principles of federal labor law preemption under Section 301 of the Labor-

Management Relations Act (LMRA), 29 U.S.C. 185. Because the policy goes beyond what preemption requires, and systematically operates to the detriment of employees covered by collective bargaining agreements (in comparison with other employees), it effectively interferes with employees' rights to bargain collectively under the NLRA. It therefore is barred by the Supremacy Clause, and gives rise to a cause of action under Section 1983 for the impairment of rights guaranteed by the NLRA.[4]

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[4] Petitioner asserts (Pet. 7-8, 11) that the governmental action in this case, as in *Golden State Transit Corp.* v. *City of Los Angeles*, 475 U.S. 608 (1986) (*Golden State I*), implicates *Machinists* preemption. See also Pet. App. 37a-38a (district court opinion). *Machinists* preemption precludes States from regulating in areas that Congress intended to be "free from all regulations, whether state or federal." *Building & Constr. Trades Council* v. *Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 113 S. Ct. 1190, 1195 (1993); see also *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 749-751 (1985); *Lodge 76, Int'l Ass'n of Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976). However, the state action in this case is barred not because it intrudes into an area that Congress intended to leave unregulated, but because "of an actual conflict with [Section] 7." *Brown* v. *Hotel Employees*, 468 U.S. at 501.

In any event, it is immaterial to our analysis whether the state action here is preempted because of an actual conflict with Section 7 or based on principles of preemption articulated in the *Machinists* case. In *Golden State II*, the Court explained that a Section 1983 suit could be predicated, as here, on state interference with rights "explicitly set forth in [Section] 7," or, as in *Golden State I*, on state interference with "the right to make use of 'economic weapons,' not explicitly set forth in the [NLRA], free of governmental interference." 493 U.S. at 110-111.

A. Respondent's Practice Of Refusing To Enforce State Wage Claims Such As Petitioner's Is Not Required By Principles Of Federal Labor Law Preemption And Interferes With Employees' Rights To Bargain Collectively

1. *Enforcement of petitioner's claim is not preempted by Section 301 of the LMRA*

Before the district court in this case, both parties agreed that respondent's policy was to enforce Sections 201 and 203 of the California Labor Code "for all employees except for those whose work is governed by [collective bargaining agreements] containing binding arbitration clauses." Pet. App. 25a. Respondent explains that the systematic policy of not enforcing wage-and-hour claims of workers covered by such contracts results from interpreting Section 229 of the California Labor Code in a manner that is "required under federal law." See Resp. Supplemental Brief in Reply to Brief for the United States as Amicus Curiae 4 [hereinafter Resp. Supp. Br.]. Section 229 of the California Labor Code states that respondent may not enforce claims involving "any dispute concerning the interpretation or application" of any collective bargaining agreement containing an arbitration clause. See note 2, *supra*. Pet. App. 8a. Respondent contends that the scope of the Section 229 bar, as construed by the California Division of Labor Standards Enforcement (DLSE), is consistent with, and required by, the preemptive force of Section 301 of the LMRA, 29 U.S.C. 185, as interpreted by this Court. See *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 220 (1985); *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 409-410 (1986). According to respondent, claims for late payment of wages upon termination of employment are included

in the category of preempted claims that are unenforceable under state law, because determining the amount due the employee as a result of the employer's violation always requires reference to the rate of pay established by the agreement. Cf., *e.g.*, Pet. App. 8a, 26a, 43a; Resp. Supp. Br. 4-5, 6 n.4. Respondent explains that, under Section 203 of the California Labor Code, the wages due an employee who has not been timely paid continue at the "same rate" until paid; in order to establish that rate and the amount due, "it is necessary to look to the collective bargaining agreement and 'apply' that agreement." Pet. App. 8a. Since resolution of late-payment claims requires both "application" and "interpretation" of the collective bargaining agreement, those claims are preempted under Section 301 of the LMRA.

Respondent errs in concluding that wage-and-hour claims such as petitioner's are preempted by Section 301 of the LMRA. In *Lingle*, 486 U.S. at 409-410, this Court ruled that a state-law claim is preempted under Section 301 only if resolution of the claim involves interpreting a collective bargaining agreement.[5] See also *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. at 220 (preemption applies when "resolution of

[5] The *Lingle* Court held that a state tort claim of retaliatory discharge was not preempted, even though the employee in *Lingle* was covered by a collective bargaining agreement containing a "just cause" discharge clause, because resolution of the claim involved "purely factual questions" pertaining to the conduct of parties and "d[id] not require construing the collective-bargaining agreement." 486 U.S. at 407. The Court explained that Section 301 preemption "merely ensures that federal law will be the basis for interpreting collective-bargaining agreements, and says nothing about the substantive rights a State may provide to workers when adjudication of those rights does not depend upon the interpretation of such agreements." *Id.* at 409.

a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract"). As the district court and the dissenting judge in the court of appeals correctly observed (Pet. App. 19a, 41a), it is not necessary to refer to the collective bargaining agreement to determine whether petitioner's late payment claim has merit. Rather, it is possible to determine whether Safeway violated its state-law obligation to make prompt payment of wages at termination without referring to the collective bargaining agreement at all. Both parties agreed on the amount that petitioner had earned and was due to be paid; the only disagreement concerned the timing of the payment. Thus, the liability determination in this case does not turn on any dispute about the precise *amount* of wages due petitioner, or about how her wages should be calculated under terms of the collective bargaining agreement governing rate of pay.[6]

[6] That is not to say that there could never be any disputes arising under the California Labor Code provisions governing wages and hours that would be preempted under Section 301. For example, this case is arguably distinguishable from *Plumbing, Heating & Piping Employers Council* v. *Howard*, 126 Cal. Rptr. 406 (Cal. Ct. App. 1975), in which the California Court of Appeal held that Section 229 of the Labor Code precluded the California Labor Commissioner from enforcing a claim for wages that arose from a dispute over whether a journeyman plumber was entitled to receive a foreman's rate of compensation for his work on a construction job. There were two collective bargaining agreements in that case that set forth the conditions under which a worker qualified as a foreman entitled to a foreman's rate of pay. The contracts apparently had to be "interpreted" and "applied," within the meaning of *Lingle, supra*, to resolve the merits of the claim. First, it was necessary to decide which contract

Moreover, and contrary to respondent's assumption, the mere fact that it might be necessary to refer to the collective bargaining agreement to determine the amount of wages due an employee as a remedy for a violation of the state wage-and-hour laws would not require preemption of the claim. Cf., *e.g.*, Pet. App. 8a, 26a, 43a; Resp. Supp. Br. 4-5, 6 n.4. As *Lingle* made clear, 486 U.S. at 413 n.12:

> A collective-bargaining agreement may, of course, contain information such as rate of pay and other economic benefits that might be helpful in determining the damages to which a worker prevailing in a state-law suit is entitled.

In such a case, federal law would govern the interpretation of the agreement, but "the separate state-law analysis would not be thereby pre-empted." *Lingle*, 486 U.S. at 413 n.12. See also *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. at 211 ("not every dispute * * * tangentially involving a provision of a collective-bargaining agreement * * * is pre-empted by [Section] 301").[7]

applied to the particular job on which the plumber was working. Then it was necessary to interpret the applicable contract to determine whether he qualified as a foreman, which in turn determined whether the employer had paid the claimant at the correct rate.

[7] Nor, contrary to respondent's contention (Br. in Opp. 6-7 & n.9; Resp. Supp. Br. 4-5, 6 n.4), was it necessary to interpret the collective agreement to determine whether Safeway's refusal to pay petitioner upon her discharge was "willful." Safeway did not refuse prompt payment because of a disagreement over what was owed petitioner, but simply because it preferred to mail her a check. Pet. App. 2a. In any event, whether there exists a "good faith dispute" concerning whether payment is due that precludes imposition of waiting

Allowing limited reference to the collective bargaining agreement in establishing the damages due on a state-law claim is not inconsistent with the rationale underlying federal preemption of claims under Section 301 of the LMRA. Preemption seeks to preserve interpretative uniformity and predictability, as well as the role of arbitration, in resolving contract disputes. It does so by requiring that disputes over the meaning of contract terms be resolved, in the first instance, through arbitration and by applying federal law. See *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 103-104 (1962); *Lingle*, 486 U.S. at 410-411. Looking to a collective bargaining agreement for the sole purpose of obtaining information on peripheral issues such as "rate of pay and other economic benefits that might be helpful in determining the damages to which a worker prevailing in a state-law suit is entitled" (*Lingle*, 486 U.S. at 413 n.12) does not create the same threat of disuniformity, uncertainty, and avoidance of arbitration that would be presented by allowing state courts to interpret substantive contract terms to determine the parties' respective rights and responsibilities under the contract, or the existence of liability under state law.

2. ***Respondent's refusal to enforce petitioner's wage claim interferes with the exercise of her rights under Section 7 of the NLRA regardless of whether it results from an "erroneous" or overly broad application of state law***

As explained above, respondent is mistaken in his assumption that, in refusing to enforce petitioner's wage claim, he is applying Section 229 of the California Labor Code in a manner that coincides with the scope of federal preemption under Section 301 of the LMRA. Section 301 does not preempt late-payment claims such as petitioner's, and does not require that respondent refrain from enforcing such claims under state law.

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time penalties under California Labor Code Section 203 is a question of state law that can be determined without interpreting the terms of the collective agreement.

Although a State would be entitled to adopt a rule of refusing to process claims that come within the scope of this Court's doctrine of federal labor law preemption under Section 301 of the LMRA, as articulated in *Lingle*, *supra*, and other cases, respondent simply does not follow such a practice here. Respondent has in fact adopted a general rule in applying Section 229 of the California Labor Code that exceeds the scope of federal preemption: he does not enforce certain categories of wage-and-hour claims of individuals covered by collective bargaining agreements containing an arbitration clause, even where, as here, those claims do not require an interpretation of the collective bargaining agreement under this Court's decisions. By categorically refusing, without any valid justification, to enforce some types of claims of individuals covered by collective bargaining agreements containing an arbitration clause, while at the same time enforcing similar claims for the benefit of other employees not covered by such agreements, the State has in effect discriminated against the former employees based on the exercise of their rights under the NLRA. As the dissent correctly noted, respondent's refusal to enforce wage-and-hour claims under these circumstances impermissibly burdens the NLRA rights of employees in petitioner's position in two ways. First, it denies only employees "who exercise their federal labor rights" to negotiate a collective agreement with an arbitration clause the benefit of having the Commisioner press their state-

law wage claims for them free of charge. Pet. App. 20a. Second, it impedes the efforts of employees to unionize by giving employers a plausible basis for telling employees during election campaigns that if they "vote for the union," then "the state Labor Commissioner [will] abandon[] you." *Id.* at 21a & n.2.

The fact that the discrimination might be characterized as arising from a good faith "error" in applying a state law or policy that purports to coincide with the scope of federal preemption does not affect the analysis in this case. For the error, which is based on a misconception of the requirements of federal law, results in withdrawing important state protections from an entire group of employees who differ from protected employees only in having exercised their federally guaranteed rights.[8] Although the policy might not have been formulated with the express purpose of "discriminating" against workers who have chosen to be covered by a collective bargaining agreement, it nevertheless has the effect of impairing employees' federal rights by selectively treating some categories of workers covered by collective agreements less favorably than employees not so covered.

The preemption rationale for DLSE's policy, as interpreted by the court of appeals, might conceivably permit the Commissioner to pursue *some* wage-and-

[8] Many States have statutes similar to that of California. See *Individual Employment Rights Manual*, 9A Lab. Rel. Rep. (BNA) No. 60, at 519:107 (1990). The purpose of such statutes is to protect lower-wage workers who live from paycheck to paycheck and cannot afford the uncertainty of waiting weeks after termination until their employer decides to make a final payment of wages due.

hour claims of individuals covered by collective bargaining agreements.[9] Nevertheless, the pattern of enforcement dictated by such a policy would still give rise to a cause of action under *Golden State II* where, as here, the Commissioner is refusing to process a category of claims that is not in fact preempted under a correct reading of federal law. A policy that systematically results in the enforcement of *all* otherwise qualified claims of eligible employees who are not covered by collective agreements, but of only *some* claims of employees covered by such agreements, impermissibly burdens the right to bargain collectively under the NLRA, because the precondition for respondent's less favorable treatment would be the employee's exercise of Section 7 rights. Cf. *Phillips* v. *Martin Marietta Corp.*, 400 U.S. 542 (1971) (employer's policy of refusing to hire women with pre-school-age children while hiring men with such children constitutes sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964). That burden is especially pronounced here, since many collective bargaining agreements that contain arbitration clauses customarily fix employees' rate of pay.

[9] Respondent contends (Br. in Opp. 4 & nn.5, 6) that Section 229 would not preclude him from prosecuting claims for recovery of wages paid by a check returned for insufficient funds, for recovery of employees' work tools or damages for their loss, or for recovery of state-mandated minimum wages. Also, the Commissioner presumably would take the position that he would not be barred from pursuing late-payment claims like petitioner's on behalf of employees covered by collective bargaining agreements that do not fix wages.

B. Petitioner Has A Cause Of Action Under 42 U.S.C. 1983 For Respondent's Refusal To Enforce Her Wage Claim Under State Law

The fact that respondent's actions could arguably be characterized (see Br. in Opp. 4-8) as stemming from an erroneous application of a state statute (which, if correctly applied, would not preclude enforcement of petitioner's claim) does not negate the violation of petitioner's Section 7 rights that results from that erroneous application, nor does it foreclose relief under Section 1983. In analogous situations, the courts have found unlawful the application of a facially valid policy in a manner that abridged NLRA rights or discriminated against those exercising such rights.

Thus, in *Nash* v. *Florida Industrial Comm'n*, *supra*, this Court held that a permissible state policy of denying unemployment benefits to individuals unemployed due to a labor dispute could not be applied to deny such benefits to an individual simply because she had filed an unfair labor practice charge with the National Labor Relations Board. Similarly, in *United Steelworkers* v. *Johnson*, 830 F.2d 924 (8th Cir. 1987) (en banc), the court enjoined a state official from denying unemployment benefits to union employees while granting benefits to their non-union coworkers in connection with the same labor dispute. The court acknowledged that the state statute, which prescribed an "able and willing to work" eligibility standard for unemployment benefits, was valid and could be applied to employees participating in a labor dispute, but it nonetheless held that the State had "failed to apply this test in a neutral, nondiscriminatory manner" by presuming that no union members, as opposed to non-members,

would be willing to work despite the labor dispute. 830 F.2d at 928-929. Finally, in *Rum Creek Coal Sales, Inc.* v. *Caperton*, 971 F.2d 1148 (4th Cir. 1992), the court enjoined the State's policy of not arresting picketers trespassing on a coal mine operator's property during a strike. The court acknowledged that the State's "Neutrality Statute," which barred the state police from "aid[ing] or assist[ing] either party" to "any labor trouble or dispute between employer and employee," placed a facially neutral and permissible condition upon the ability of the parties to a labor dispute to claim the services of the state police. 971 F.2d at 1150, 1154. It nonetheless held that, by interpreting the Neutrality Statute as requiring state officials to allow strikers to "prevent[] ingress and egress into [private] property," the State applied the statute in a manner that undermined the coal company's "rights to stay in business and withstand a strike," which were guaranteed under federal law. *Id.* at 1154.

These cases illustrate that the court of appeals was simply mistaken in stating that "[a] misinterpretation of a perfectly valid state statute * * * does not provide grounds for federal relief." Pet. App. 12a. And, as this Court's decision in *Golden State II* makes clear, if the misinterpretation of a facially valid state statute leads to the adoption of a policy that interferes with employees' exercise of rights under the NLRA, that interference would provide grounds for federal relief under Section 1983.

Finally, the court of appeals advanced two insubstantial reasons for concluding that, even if the Commissioner had misapplied Section 229 of the California Labor Code in refusing to enforce a claim that was not preempted under federal law, petitioner

would still have no cause of action under Section 1983. First, the court reasoned that, "[g]iven the primacy of the federal scheme for handling labor disputes," Congress "would not want state officials erring on the side of adjudicating state law disputes whenever it is a close call as to whether a claim is preempted." Pet. App. 14a. Rather, the court concluded, "Congress would presumably want state officials to defer to arbitration and adjudication under the federal scheme if a claim even arguably is intertwined with consideration of a collective bargaining agreement containing an arbitration clause." *Ibid.* As the dissent correctly responded (*id.* at 18a), however, "[t]o the extent my colleagues are divining some preemptive corona surrounding the federal labor laws, it surely cannot include that which the Supreme Court has said is *not* preempted." This Court in *Lingle* and other cases has made clear that a state-law claim is preempted under Section 301 of the LMRA only if resolution of the claim in fact requires interpreting a collective bargaining agreement. See pages 17-18, *supra;* see also *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 25 n.28 (1983) ("we have never intimated that any action merely relating to a contract within the coverage of [Section] 301 arises exclusively under that section"). In this respect, preemption under Section 301 is more restrictive than preemption under the doctrine of *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959) (state jurisdiction must yield over activities that are "arguably" protected or prohibited by the NLRA). To permit Section 301 to preempt state wage-and-hour claims that do not, in fact, require interpretation of the terms of a collective bargaining agreement would advance none of the purposes the preemption doctrine is designed to serve, see page 20, *supra*, and thus would result in an unjustified discrimination against unionized employees who are covered by collective bargaining agreements.

Second, the court of appeals erred in concluding that petitioner could not sue for relief under Section 1983 because a remedy for respondent's allegedly erroneous application of state law to bar enforcement of her claim was available elsewhere: petitioner should have sought a writ of mandate against respondent in the California courts. Pet. App. 12a. As an initial matter, it is unclear whether the California courts would interpret Section 229 of the California Labor Code in a way that vindicates petitioner's rights under Section 7 of the NLRA. Section 229, on its face, prevents the Labor Commissioner from exercising jurisdiction over claims requiring the "interpretation or application of any collective bargaining agreement" containing an arbitration clause. See Resp. Supp. Br. 5-6. There is no assurance that the California courts would reject the Commissioner's administrative interpretation of that unqualified statutory language and would instead interpret it as covering only those claims that are preempted by Section 301 of the LMRA under principles set forth in *Allis-Chalmers* and *Lingle*. But, in any event, this Court has specifically recognized that Section 1983 was enacted "to provide a remedy in the federal courts supplementary to any remedy any State might have." *McNeese* v. *Board of Educ.*, 373 U.S. 668, 672 (1963). Therefore, the availability of relief under Section 1983 for a violation of federal rights "may not be defeated because relief was not first sought under state law which provided a remedy."

Id. at 671. Accord *Damico* v. *California*, 389 U.S. 416, 416-417 (1967) (per curiam); *Houghton* v. *Shafer*, 392 U.S. 639, 639-641 (1968) (per curiam). See *Monroe* v. *Pape*, 365 U.S. 167, 183 (1961); cf. *id.* at 224-225 (Frankfurter, J., dissenting in part) (taking the position, rejected by the majority in that case, that the availability of a civil remedy under state law should bar relief under Section 1983); see also *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 167-168 (1970) (Section 1983 relief available for discriminatory practices of state officials, "[a]lthough not authorized by written law"); *Monell* v. *Department of Social Services*, 436 U.S. 658, 690-691 (1978) (same). It follows that petitioner stated a valid claim under Section 1983 and is entitled to appropriate relief.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MARCH 1994

☆ U. S. GOVERNMENT PRINTING OFFICE: 1994 301157 88114